

# **WASTE WATER SYSTEM OPERATION AGREEMENT** **AIRPORT SEWER PLANNING AREA**

THIS WASTE WATER SYSTEM OPERATION AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by and between the **BOARD OF SUPERVISORS OF FAUQUIER COUNTY**, (hereinafter called the “County”), and the **FAUQUIER COUNTY WATER AND SANITATION AUTHORITY**, (hereinafter called the “Authority”), recites and provides as follows:

## **RECITALS:**

**WHEREAS**, the County is developing the wastewater treatment service in the vicinity of the Warrenton-Fauquier Airport; and

**WHEREAS**, the Authority is willing to operate and maintain the Wastewater System on behalf of the County; and

**WHEREAS**, the County and the Authority wish to memorialize in writing the terms of their agreement as it relates to the operation, maintenance and capital improvements of the Airport Sewer system.

This Agreement is entered into pursuant to Authority granted to the entities under §15.2-1300, §15.2-2111 and §15.2-5110 of the *Code of Virginia*, 1950, as amended.

## **AGREEMENT:**

**NOW THEREFORE**, in consideration of the promises contained herein, and intending to be legally bound, the County and the Authority hereby covenant and agree as follows;

### **A-1. The System**

The Airport Wastewater System consists of, but is not limited to, the requisite facilities, components and related easements necessary for the collection and treatment of wastewater for the landowners of properties in the vicinity of the Warrenton-Fauquier Airport. The Airport Wastewater System contains both public and private segments, generally described as follows:

1. Treatment units, grinder pumps, 3” PVC forcemain, drip tubing, septic tanks and various controls which are owned by the County as the public segment of the airport wastewater system.

2. Individual sewer laterals/service lines and plumbing fixtures, which are between the public facilities and individual properties and businesses, are owned by individual property owners as the private segment of the Airport Wastewater System are not considered to be a segment of what is hereinafter called the System.

**A-2. Operations and Maintenance**

1. **Operation of the System** – the Authority shall, on a reimbursable basis, operate the System on behalf of the County. System operations shall be in conformance with all federal, state and local laws and regulations governing the operation of water systems of the size and nature of the System. System operations shall be conducted in the most efficient and economical manner possible. The Authority shall promulgate for consideration by the County all policies necessary for the economic, efficient and proper operation and maintenance of the System. The Authority shall operate the System in conformance with any and all policies adopted by the County.
2. **Maintenance of the System** – the Authority shall, on a reimbursable basis, maintain the System on behalf of the County, in proper working order and in conformance with all federal, state and local laws and regulations. The Authority shall periodically inspect the System and create and recommend to the County a maintenance plan to insure the continued maintenance of the System in the most economical and efficient manner. The Authority shall operate and maintain the System in conformance with any maintenance plan adopted by the County that is in conformance with all federal, state and local laws and regulations.

**A-3 County Obligations**

1. **Indemnity of the Authority** – the County agrees to defend the Authority and its employees against any and all legal action brought by any third party to this Agreement related to the System and performance of the provisions of this Agreement.
2. **Operation and Maintenance -**

The Board of Supervisors shall annually consider and approve a budget for the operation and maintenance of the System.

The Board of Supervisors shall include within the annual budget for the County amounts sufficient to fund the Capital Improvements Program and operation and maintenance budgets for the System.

**A-4. Authority Obligations**

1. **Creation of Yearly Budget** – the Authority shall annually prepare and present to the County a budget for the operation and maintenance of the System. The budget shall be prepared in a manner so as to provide the most economic and efficient System operation and maintenance.
2. **Budget Liability** – the Authority shall use its best efforts to prepare and recommend adequate annual operations and maintenance budgets. The Authority shall not exceed any budget approved for the System without the express written authorization of the County, however, the Authority shall have no obligation to expend any of its funds towards any expense related to the System

**A-5. Rates**

1. The Authority shall recommend to the County, annually, rate schedules sufficient to cover all costs and charges associated with the operation, maintenance, improvements and repairs of the System.
2. The County shall establish a rate schedule, at its discretion, determining the Usage Fees it wishes to assess for whatever part of the County's costs that it desires to recover.
3. The Authority shall, on a reimbursable basis, serve as a billing and collection agency for the County's Usage Fees. The Authority shall make all reasonable efforts to collect all fees and charges due to the County. The Authority will promptly notify the County of all accounts delinquent more than thirty (30) days. The Authority shall cooperate with the County in all County-initiated collection activities.
4. The Authority shall make no sewer charges of its own to individual System customers.

**A-6. Payments**

The Authority shall bill the County on a monthly basis for any and all charges associated with the operation, maintenance, improvement and repair of the System. The County shall have forty-five (45) days from the invoice date to pay all charges.

**A-7. Audit**

1. The Authority and its authorized representatives shall have access to, and the right to examine and copy, at its sole expense, until the expiration of three (3) years after the final payment under this Agreement, all books,

documents, records, papers, and other supporting data of the County which involve transactions related to this Agreement. In the event of litigation involving this Agreement, the foregoing rights of access, examination and copying shall continue until such litigation shall have been finally resolved.

2. The County and its authorized representatives shall have access to, and the right to examine and copy, at its sole expense, until the expiration of three (3) years after the final payment under this Agreement, all books, documents, records, papers, and other supporting data of the Authority which involve transactions related to this Agreement. In the event of litigation involving this Agreement, the foregoing rights of access, examination, and copying shall continue until such litigation shall have been finally resolved.

**A-8. Authority Obligation to System Customers**

The Authority shall have no contractual obligation to System customers. There shall be no credit to any System customer, or properties served by the System, on account of any fees paid pursuant to this Agreement.

**A-9. Acceptance of System Customers**

The County shall accept customers into its System as regular customers only under the following conditions:

1. Sewer capacity must be available in the System.
2. All applicable fees are paid in full.

**A-10. Insurance**

1. County Insurance – The County shall maintain insurance coverage in the following amounts:

	<u>Type of Policy</u>	<u>Limits of Liability</u>
A.	General Liability	\$1,000,000 Each Occurrence and Aggregate
B.	Standard Workers' Compensation Employer's Liability	Statutory \$500,000

C.	Automobile Liability	\$1,000,000 Combined Single Limit (Bodily Injury and Property Damage)
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2. Certificates of Insurance – Certificates of Insurance evidencing the above-required insurance coverage shall be provided by the County within thirty (30) days of the commencement of any services under this Agreement. Such Certificates of Insurance shall provide for at least forty-five (45) days notice to the Authority of cancellation, material change, or lapse of coverage and shall certify that all policies meet the requirements of this Article in all respects. The insurance coverage specified herein shall constitute minimum requirements and the Authority shall be included as an additional insured on the policies described in Section 1.A and 1.C above.

3. WSA Insurance – The WSA shall maintain insurance coverage in the following amounts throughout the term of this Agreement:

	<u>Type of Policy</u>	<u>Limits of Liability</u>
A.	General Liability	\$1,000,000 Each Occurrence and Aggregate
B.	Standard Workers’ Compensation Employer’s Liability	Statutory \$500,000
C.	Automobile Liability	\$1,000,000 Combined Single Limit (Bodily Injury and Property Damage)

4. Certificates of Insurance – Certificates of Insurance evidencing the above-required insurance coverage shall be provided by the Authority within thirty (30) days of the commencement of any services under this Agreement. Such Certificates of Insurance shall provide for at least forty-five (45) days notice to the County of cancellation, material change, or lapse of coverage and shall certify that all policies meet the requirements of this Article in all respects. The insurance coverage specified herein shall constitute minimum requirements and the County shall be included as an additional insured on the policies described in Section 3.A and 3.C above.

#### **A-11. Dates and Terms of Agreement**

1. This Agreement shall be for a term of one (1) year and shall be automatically renewed for successive one (1) year terms, unless either party gives the other party written prior notice of its intent to terminate

this Agreement at the expiration of the term. Prior notice must be given at least one hundred and eighty days (180) prior to the expiration of any current term.

2. Neither the Authority, nor the County, shall be responsible for any delay caused by acts of God, war, strikes, fires or natural calamities.

#### **A-12. Default**

If the County or the Authority shall fail or neglect to keep and perform each and every one of the covenants, conditions and agreements contained herein, and such failure or neglect is not remedied within thirty (30) days (or such longer period as may be reasonably required to correct such failure or neglect with exercise of due diligence) after written notice from either the Authority or the County specifying such failure or neglect, then either the Authority or the County may pursue any legal remedies available to them. No default as herein provided shall be deemed complete, unless at the time the Authority or County seeks to take any action based upon such default, the same shall remain uncured. A default shall not exist regarding any act required to be performed or not performed hereunder that is not completed within the time specified herein but is commenced within such time and is diligently pursued thereafter.

#### **A-13. Appropriation**

The obligations of the County and the Authority under this Agreement are expressly made subject to the appropriation of funds necessary to carry out the terms of this Agreement. Upon the failure to appropriate funds necessary to fulfill the obligations imposed herein, this Agreement shall be terminated upon the date of exhaustion of the funds which have been appropriated.

#### **A-14. Termination**

1. **For Cause** – this Agreement may be terminated by either party, upon the failure of the other party to comply with any obligation imposed upon it under this Agreement, provided however, that prior to termination pursuant to the terms of this section, the party in default shall be given written notice of the other party's intent to terminate this Agreement and shall have thirty (30) days from the receipt of the notice to cure the default in conformance with Paragraph A-13 herein.
2. **Failure to appropriate** – the failure of the County to appropriate funds necessary for the completion of any obligation under this Agreement shall act to automatically terminate this Agreement once the appropriated funds are fully expended.

**A-15. Permits**

1. **The County** shall be named as the Permittee in all permits, securing in its name all zoning, building, Virginia Department of Health and Department of Environmental Quality permits necessary for the expansion, improvement, operation and maintenance of the System. The County shall be responsible for complying with the conditions of any such permits.
2. **The Authority** shall secure on behalf of the County, and at the County's sole expense, all permits necessary to operate the System. The County shall cooperate fully with the Authority in the permit application process and shall execute any and all applications and documents necessary to obtain any permit required by federal, state or local law or regulation to operate the System.

**A-16. Violations**

The Authority shall immediately notify the County of any Notice of Violation or any regulatory action taken against the System by any federal, state or local regulatory agency. The Authority shall immediately prepare all necessary and proper plans to remediate the violation and shall present the plan to the County. The Authority shall take all actions authorized by the County to immediately abate any violation.

**A-17. Notices**

All notices hereunder shall be in writing, shall be given either manually or by mail and shall be deemed sufficiently given when actually received by the party to be notified or when mailed, if mailed by certified or registered mail, postage prepaid, addressed to the other party at his address set forth below. Any party may, by notice to the other parties given in the manner provided for herein, change his or its address for receiving such notices.

Address for notices to the County:

G. Robert Lee  
Fauquier County Administrator  
Court and Office Building – Fourth Floor  
40 Culpeper Street  
Warrenton, VA 20186-3298

Address for notices to the Authority:

Barney E. Durrett, Jr., General Manager  
Fauquier County Water & Sanitation Authority  
P. O. Box 3047  
Warrenton, VA 20188-1747

**A-18. Governing Law; Venue**

This Agreement shall be construed and performed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of law principles. Resolution of any outstanding claims, counterclaims, disputes and other matters arising out of or in connection with this Agreement shall be decided in a court of competent jurisdiction in the Commonwealth of Virginia.

**A.19. Entire Agreement**

This Agreement constitutes the entire agreement of the parties relating to its subject matter and supersedes all prior and contemporaneous agreements of the parties in connection herewith.

**A.20. Cumulative Rights**

The rights and remedies provided in this Agreement shall not be exclusive, but shall be cumulative and in addition to all other rights and remedies provided by applicable law, including but not limited to, statutory or common law indemnity, contribution, or other remedy at law or in equity.

**A.21. Waiver not Continuing**

The waiver by either party of any failure on the part of the other party to perform any of its obligations under this Agreement shall not be construed as a waiver of any future or continuing failure or failures, whether similar or dissimilar thereto.

**A.22. Mutual Work Product**

This Agreement results from negotiations between the parties. It is the intention of each of the parties that this Agreement is a mutual work product and that neither of the parties shall be considered to be responsible solely for the preparation of same. The parties agree that no phrase or provision of this Agreement that is ultimately held to be ambiguous shall be construed against either of them.



**A.23. Surviving Obligations**

The representations, warranties and covenants of the parties shall continue after and survive, and be enforceable notwithstanding, the execution of this Agreement, the completion of the Services or the expiration or other termination of this Agreement.

**A.24 Captions**

The captions in this Agreement are for purposes of convenience only and form no substantive part of this Agreement. In no event shall they be deemed to limit or modify the text of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement as of the day and year first above written.

**AUTHORITY:**

**FAUQUIER COUNTY WATER AND  
SANITATION AUTHORITY**

ATTEST:

\_\_\_\_\_

by: \_\_\_\_\_  
Earl H.Douple, Jr., Chairperson

**COUNTY:**

**BOARD OF SUPERVISORS  
OF FAUQUIER COUNTY**

ATTEST:

\_\_\_\_\_

by: \_\_\_\_\_  
Harry F. Atherton, Chairman